

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUNIOR A. MORAN,
Petitioner

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA,

Case No. 1:23-cv-01313-SKO (HC)

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE**

FINDINGS AND RECOMMENDATION TO DISMISS PETITION

[TEN DAY DEADLINE]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant habeas petition in this Court on September 5, 2023. After conducting a preliminary review, the Court found that Petitioner failed to present any grounds for relief and failed to name a proper respondent. On September 7, 2023, the petition was dismissed, and Petitioner was directed to file an amended petition within thirty days. (Doc. 4.) Over thirty days have passed and Petitioner has failed to comply or respond to the Court’s order. The Findings and Recommendations were also returned by the U.S. Postal Service as undeliverable on September 13, 2023. Because Petitioner has failed to comply with the Court’s order and failed to keep the Court apprised of his address, the Court will recommend the petition be dismissed.

DISCUSSION

Local Rule 110 provides that a “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53 54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules). In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260 61; Malone, 833 F.2d at 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423 24.

Here, the Court finds that the public’s interest in expeditiously resolving this litigation and the Court’s interest in managing the docket weigh in favor of dismissal because this case has been pending in this Court since September 5, 2023, with no further communication from Petitioner. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from any unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public policy

1 favoring disposition of cases on their merits, is greatly outweighed by the factors in favor of
2 dismissal. Finally, there are no less drastic alternatives since Petitioner has failed to keep the
3 Court apprised of his current address; thus, the Court has no way of communicating with
4 Petitioner.

5 **ORDER**

6 IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a District
7 Judge to the case.

8 **RECOMMENDATION**

9 For the foregoing reasons, the Court HEREBY RECOMMENDS that this action be
10 DISMISSED for Petitioner's failure to comply with a court order and failure to prosecute.

11 This Findings and Recommendation is submitted to the assigned District Court Judge,
12 pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of
13 Practice for the United States District Court, Eastern District of California. Within ten (10) days
14 after service of the Findings and Recommendation, Petitioner may file written objections with
15 the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
16 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28
17 U.S.C. § 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified
18 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
19 (9th Cir. 1991).

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21 IT IS SO ORDERED.

22 Dated: October 13, 2023

/s/ Sheila K. Oberto

23 UNITED STATES MAGISTRATE JUDGE

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